

1 Harvey M. Moore, Esq., CSB 101128
2 Terri Lazo, Esq., CSB 228663
3 The Moore Law Group,
4 A Professional Corporation
5 3710 S. Susan Street, Suite 210
6 PO Box 25145
7 Santa Ana, CA 92799
8 (714) 431-2000

9 Attorneys for Defendant
10 The Moore Law Group, A.P.C.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

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15
16 NICK MAKREAS,

17 Plaintiff,

18 vs.

19 THE MOORE LAW GROUP, A.P.C. A
20 CALIFORNIA CORPORATION;
21 CITIBANK (SOUTH DAKOTA) N.A., A
22 BUSINESS ENTITY, FORM UNKNOWN;
23 DOES 1 THROUGH 25 INCLUSIVE, et
24 al.,

25 Defendant(s).

Case No. 3:11-cv-02406-MMC

**DEFENDANT THE MOORE LAW
GROUP, APC'S REPLY TO
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

Hearing Date: July 29, 2011
Time: 9 a.m.
Courtroom: 7

Judge: Hon. Maxine Chesney

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1 In his Opposition to Defendant The Moore Law Group, APC's (hereinafter referred
2 to as "Defendant") Motion to Dismiss, Plaintiff Nick Makreas (hereinafter referred to as
3 "Plaintiff") spends over half the pleading pontificating upon how Defendant's inaccurate
4 furnishing of information to the credit reporting agencies and failure to conduct a
5 reasonable investigation after subsequent notice of dispute, has harmed him and is the
6 basis of his Complaint. Plaintiff then casually argues unsubstantiated claims of "fraud"
7 violations under Cal. Bus. & Prof. Code § 17200 and failing to inform of debt collector
8 status under 15 U.S.C. § 1692e(11).
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12 **Plaintiff's Arguments Regarding Furnishing of Information and Reasonable**
13 **Investigation Are Without Merit, Inapplicable to Defendant, Not Alleged in**
14 **Plaintiff's Complaint, and Nonresponsive to Defendant's Motion to Dismiss**
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17 In his Complaint, Plaintiff never alleged any cause of action or facts against
18 Defendant for inaccurate furnishing of information to the credit reporting agencies and
19 failure to conduct a reasonable investigation after subsequent notice of dispute. In fact,
20 Defendant is unequivocally not a furnisher of information to the credit reporting agencies
21 and therefore not subject to the reasonable investigation prong of the FDCPA in regards to
22 the furnishing of such information and any dispute thereto related. These arguments by
23 Plaintiff are misplaced and not applicable to Defendant or to its Motion to Dismiss. As to
24 the tagged on argument that Defendant failed to timely validate the debt, Plaintiff filed the
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1 present action on May 17, 2011, a mere 12 days after the date he alleges Defendant
2 received his validation request; hardly providing Defendant any opportunity to do so.
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4 **California Business and Professions Code Sections 17200 and 17500**

5 Plaintiff's alleges violations of Cal. Bus. & Prof. Code § 17200 and 17500, or the
6 UCL. Plaintiff's allegation consists of conclusive statements that Defendant violated the
7 fraud prong of UCL § 17200 through allegedly failing to identify himself as a debt
8 collector, furnishing information to the credit reporting agencies that the debt was
9 accurate, and failing to do a reasonable investigation. Two of these allegations are not
10 applicable to Defendant as it is not a furnisher of information to the credit reporting
11 agencies and therefore did not and could not report the debt as accurate there on and is not
12 called to perform a reasonable investigation if some other party's furnished information is
13 disputed. The third allegation is a conclusion, one which Plaintiff continues to fail to
14 allege facts to support; and no economic damages are alleged. As argued at length in
15 Defendant's Motion to Dismiss, Plaintiff must plead actual economic damages or no cause
16 of action under the UCL exists. The "injury-in-fact element of a UCL claim refers to an
17 *economic* injury; a UCL plaintiff's injury in fact [must] specifically involve lost money or
18 property." *Folgelstrom v. Lamps Plus, Inc.* (Cal. App. 2 Dist., Apr. 29, 2011) 2011 WL
19 1601990 (citing *Kwikset, supra*, 51 Cal. 4th at 324). Therefore, Plaintiff's causes of action
20 under § 17200 and § 17500 fail as a matter of law.
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1 Furthermore, as argued in the Motion to Dismiss and below, there was no wrong act
2 on the part of Defendant under the alleged first or second causes of action; therefore, there
3 was also no fraudulent concealment, material misstatements, or intentional violations
4 constituting unlawful, unfair and fraudulent business acts or practices which constitute
5 unfair business practices under California Business and Professions Code Sections 17200
6 and 17500.
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9 **Plaintiff's Cause of Action Under 15 U.S.C. § 1692e(11) Fails to State Any Facts to**
10 **Support Its Conclusive Allegation or to Refute Defendant's Motion to Dismiss**
11 **Arguments Regarding It**
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14 In his Opposition, Plaintiff admits that he failed to plead facts sufficient to constitute
15 the cause of action under 15 U.S.C. § 1692e(11); and yet, he fails to state any additional
16 facts to support his contention. He addresses none of the arguments of Defendant's
17 Motion to Dismiss regarding this cause of action and appears to just ask the Court to take
18 him at his word that such a violation occurred. Such pleading is not sufficient to survive a
19 Motion to Dismiss, even if the litigant is a pro per.
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23 Plaintiff pled many of his various other causes of action at length in his Complaint.
24 He cited dates and language. This is not a case where a pro per litigant has failed to plead
25 any facts. He pled facts, just none related to this cause of action and it is Defendant's
26 contention that this is because no facts exist to support this allegation. As argued at length
27 in Defendant's Motion to Dismiss, under the first prong of *Twombly*, the tenet that the
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1 Court must accept a complaint's allegations as true are inapplicable to threadbare recitals
 2 of a cause of action's elements, supported by mere conclusory statements. *Bell Atlantic*
 3 *Corp v. Twombly* (2007) 550 U.S. 544.
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5 To survive a motion to dismiss, the complaint "must contain sufficient factual
 6 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v.*
 7 *Iqbal* (2009) 129 S.Ct. 1937, 1949-50; *citing Twombly, supra*, 550 U.S. at 555. "A claim
 8 has facial plausibility when the plaintiff pleads factual content that allows the court to
 9 draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*
 10 Plaintiff's "factual allegations" in the Complaint do not state any concrete facts beyond
 11 mere recital of the FDCPA code section 1692e(11), along with conclusory statements that
 12 Defendant violated such provision. His cause of action under 15 U.S.C. § 1692e(11) fails
 13 and should be dismissed with prejudice.
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18 **Plaintiff Fails to Oppose Defendant's Arguments in Support of Dismissal for All**
 19 **Remains Causes of Action and Allegations Therein**
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21 In his Opposition to Defendant's Motion to Dismiss, Plaintiff fails to even mention
 22 his causes of action against Defendant for violations of 15 U.S.C. 1692g(a), 15 U.S.C.
 23 1692g(b), 15 U.S.C. § 1681b, 15 U.S.C. 1681(n), 1681n(a)(1)(A), 15 U.S.C. 1681o(a), 15
 24 U.S.C. 1681o(b), and Cal. Civ. Code § 1788.17; and therefore does not refute or oppose
 25 Defendant's motion to dismiss such causes of action.
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1 As argued at length in Defendant's Motion to Dismiss, Plaintiff's first and third
2 causes of action for violations of debt notice and post cease and desist contact, under the
3 FDCPA and the Rosenthal Act, are without merit. Plaintiff alleges violation of 15 U.S.C.
4 1692g(a) and Cal. Civ. Code § 1788.17, however pleads that he received a 30 day notice
5 letter on or about April 13, 2011, with an initial contact from Defendant on April 7, 2011,
6 and therefore compliance with the 5 day rule. (Complaint ¶ 29, 32). Plaintiff also alleges
7 violation of 15 U.S.C. 1692g(b) and the Rosenthal Act, post verification or validation
8 request contact, i.e. post cease and desist contact. However, the facts, as pled in Plaintiff's
9 Complaint, clearly state that all contact by Defendant occurred from April 7, 2011 through
10 May 4, 2011, thus predating receipt of the validation request on May 5, 2011. (Complaint
11 ¶¶ 30, 32).

12 The gist of Plaintiff's second cause of action against Defendant for violation of the
13 FCRA is that Defendant allegedly placed two unauthorized inquiries into Plaintiff's credit
14 report with no permissible purpose. (Complaint ¶ 54). As argued at length in Defendant's
15 Motion to Dismiss, 15 U.S.C. § 1681b specifically allows a collection law firm such as
16 Defendant to pull a debtor's credit report in connection with collecting on a delinquent
17 credit card account. Since Defendant had an absolute right to run Plaintiff's credit report,
18 Defendant did not violate 15 U.S.C. 1681(n) or 1681n(a)(1)(A), willful noncompliance, or
19 15 U.S.C. 1681o(a) negligent noncompliance, as alleged in the Complaint; and Plaintiff is
20 not entitled to attorney's fees pursuant to 15 U.S.C. 1681o(b), particularly since he is in

21 pro per.

Conclusion

For the foregoing reasons and based upon the lengthy argument in Defendant's Motion to Dismiss, Defendant respectfully requests the Court grant its Motion to Dismiss as to all causes of action, without leave to amend.

Dated: July 12, 2011

The Moore Law Group, APC

By: /s/ Terri Lazo

Harvey M. Moore
Terri Lazo
Attorneys for Defendant
The Moore Law Group, APC

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CERTIFICATE OF SERVICE

I, Terri Lazo, do hereby certify that on July 12, 2011, a copy of the forgoing document was sent via U.S. Mail to:

Nick Makreas
271 Tulare Drive
San Bruno, CA 94066

Julia B. Strickland, Esq.
Marcos D. Sasso, Esq.
A.R. Kachadoorian, Esq.
Stroock & Stroock & Lavan LLP
2029 Century Park East, Suite 1600
Los Angeles, CA 90067-3086

/s/ Terri Lazo

TERRI LAZO

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3710 S. Susan Street, Suite 210, Santa Ana, CA 92704.

On July 12, 2011, I served the foregoing documents described as:

Reply to Opposition to Motion to Dismiss

☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

☒ by placing ____ the original x a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ by causing personal service of the foregoing document via DDS at the following address:

Nick Makreas

271 Tulare Drive

San Bruno, CA 94066

Julia B. Strickland, Esq.

Marcos D. Sasso, Esq.

A.R. Kachadoorian, Esq.

Stroock & Stroock & Lavan LLP

2029 Century Park East, Suite 1600

Los Angeles, CA 90067-3086

☒ BY MAIL

☐ I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ ** (VIA EMAIL) I caused the above-referenced document to be delivered via electronic mail to the above-referenced email address.

☐ ** (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

☐ ** (VIA ONTRAC OVERNIGHT EXPRESS) As follows: I am "readily familiar" with the firm's practice of practice of collection and processing documents for overnight delivery.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 12, 2011, at Santa Ana, California

/s/ Terri Lazo
TERRI LAZO